



(916) 323-7715

May 2, 1986

Mr. Donald L. Kroger
Alameda County Assessor
1221 Oak Street
Oakland, CA 94612

Attention: Mr. Steven R. Sara
Chief, Appraisal Division

Dear Mr. Kroger:

This is in response to your April 16, 1986, letter to Mr. Richard Ochsner wherein you enclosed several letters from the U.S. Department of Housing and Urban Development (HUD) and attachments thereto, and you asked for our opinion with respect to the HUD request that you exempt all properties owned by HUD in its "Property Disposition Inventory".

As construed by HUD Program Assistant Rita M. Patton, in her April 10, 1986, letter to you, 12 U.S.C. Section 1714 and United States v. San Diego County (1966), 249 F.Supp. 321, are to the effect that the "decision as to waiving taxes charged while the property is in HUD's Property Disposition Inventory, rests with the counties." As hereinafter explained, we do not agree with that construction of the section and the case.

As you are aware, the general rule is that property owned by the United States is exempt from property taxation. There are, however, specific limited exceptions to the general rule, one of which is set forth in 12 U.S.C. Section 1714:

"Nothing in this subchapter shall be construed to exempt any real property acquired and held by the Secretary under this subchapter from taxation by any State or political subdivision thereof, to the same extent, according to its value, as other real property is taxed."

As construed by the Superior Court of New Jersey in Byram Holding Co. v. Bogren (1949), 2 N.J.Super. 331, 63 A.2d 322, Section 1714 discloses Congressional intent that real property owned by the Federal Housing Commissioner (now Secretary of HUD) should be subject to municipal taxation. The United States District Court, Southern District of California's, decision in United States v. San Diego County, supra, is to the same effect:

"...It is clear that Congress has limited the waiver to the exemption of property owned by the F.H.A. Title 12 U.S.C.A. Section 1714 affirmatively and unequivocally consents to local taxation of real property...."

Since the United States is exempt from municipal or local taxation, when courts refer to the "waiver" of tax immunity, it is the Congressional consent or Congressional waiver the courts are referencing, not a local governmental entity's choosing to ignore statutory authority waiving tax immunity. As to the latter, Article XIII, Section 1 of the California Constitution is specific:

"Unless otherwise provided by this Constitution or the laws of the United States.

(a) All property is taxable...."

Accordingly, as Section 1714 has eliminated tax immunity for property owned by the Secretary of HUD, Article XIII, Section 1 requires that such properties be assessed and taxed, and there is no basis in law for a county assessor to not assess those properties or to waive property taxes with respect thereto. In this regard, see Bauer-Schweitzer Malting Co., Inc. v. San Francisco (1973), 8 Cal.3d 942; Hewlett-Packard Co. v. Santa Clara County (1975), 50 Cal.App.3d 74; and General Dynamics Corp. v. San Diego County (1980), 108 Cal.App.3d 132.

Very truly yours,

James K. McManigal, Jr.
Tax Counsel

JKM:fr

cc: Mr. Richard H. Ochsner
bc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson
Mr. Verne Walton